

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 99-0020
)
Robert B. McCloy, Jr.,)
)
Respondent) **Order Lifting Stay Order**

PROCEDURAL HISTORY

On March 22, 2002, I issued a Decision and Order concluding Robert B. McCloy, Jr. [hereinafter Respondent], violated the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831).¹ On April 22, 2002, Respondent filed a petition for reconsideration of the March 22, 2002, Decision and Order, which I denied.²

On July 15, 2002, Respondent requested a stay of the Order in *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173 (2002), pending the outcome of proceedings for judicial review, and on July 17, 2002, I granted Respondent's request for a stay.³

¹*In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173 (2002).

²*In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 228 (2002) (Order Denying Pet. for Recons.).

³*In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 745 (2002) (Stay Order).

On December 2, 2003, the United States Court of Appeals for the Tenth Circuit affirmed *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173 (2002),⁴ and on October 4, 2004, the Supreme Court of the United States denied Respondent's petition for writ of certiorari.⁵ On February 14, 2005, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], filed a motion to lift the July 17, 2002, Stay Order on the ground that proceedings for judicial review have been concluded.⁶ The Hearing Clerk served Respondent with Complainant's Motion to Lift Stay Order on February 15, 2005. Respondent failed to file a response to Complainant's Motion to Lift Stay Order within 20 days after service, as required by the rules of practice applicable to this proceeding.⁷ On March 15, 2005, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Complainant's Motion to Lift Stay Order.

CONCLUSION BY THE JUDICIAL OFFICER

I issued the July 17, 2002, Stay Order to postpone the effective date of the Order issued in *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173 (2002), pending the outcome of proceedings for judicial review. Proceedings for judicial review are concluded. Therefore, Complainant's Motion to Lift Stay Order is granted; the July 17, 2002, Stay

⁴*McCloy v. United States Dep't of Agric.*, 351 F.3d 447 (10th Cir. 2003).

⁵*McCloy v. United States Dep't of Agric.*, ___ U.S. ___, 125 S. Ct. 38 (2004).

⁶Complainant's Motion to Lift Stay Order.

⁷See 7 C.F.R. §§ 1.130-.151 and, in particular, 7 C.F.R. § 1.143(d).

Order is lifted; and the Order issued in *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173 (2002), is effective, as set forth in the following Order.

ORDER

1. Respondent Robert B. McCloy, Jr., is assessed a \$2,200 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the “Treasurer of the United States” and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing Division
Room 2343-South Building
Washington, DC 20250-1417

Respondent’s payment of the civil penalty shall be forwarded to, and received by, Ms. Carroll within 30 days after service of this Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 99-0020.

2. Respondent Robert B. McCloy, Jr., is disqualified for a period of 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or device, and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. “Participating” means engaging in any activity beyond that of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of horses to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being

present in the warm-up areas, inspection areas, or other areas where spectators are not allowed at any horse show, horse exhibition, horse sale, or horse auction; and
(d) financing the participation of others in any horse show, horse exhibition, horse sale, or horse auction.

The disqualification of Respondent shall become effective on the 30th day after service of this Order on Respondent.

Done at Washington, DC

March 22, 2005

William G. Jenson
Judicial Officer